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No. 184

In the Supreme Court of the United States

OCTOBER TERM, 1963

VERNON GRANT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 7–8) is reported at 315 F. 2d 395.

JURISDICTION

The judgment of the court of appeals was entered on March 29, 1963. A petition for rehearing was denied on May 3, 1963. The petition for a writ of certiorari was filed on June 3, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the proof was adequate to show that petitioner conspired to sell and did make a sale of narcotics without the prescribed order form.

STATUTE INVOLVED

Section 4705(a) of Title 26 provides:

> It shall be unlawful for any person to sell, barter, exchange, or give away narcotic drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary or his delegate.

STATEMENT

Petitioner and one Johnson were convicted in the United States District Court for the Northern District of Georgia of conspiring to sell narcotics without a written order form in violation of 26 U.S.C. 4705(a) and of the substantive offense of selling without such order form. Petitioner was sentenced to concurrent terms of imprisonment for five years. The conviction was affirmed on appeal.

The evidence showed that a government agent was introduced to Johnson as a prospective buyer of narcotics (R. 19, 60). Johnson said that he did not personally have the narcotics to sell, but that it was his function to locate a buyer for someone who had them (R. 19, 30). Johnson introduced the agent to petitioner who offered an assortment of morphine, codeine and pantopon tablets for $5,000. The agent agreed to buy $500 worth of morphine (R. 19). The sale was consummated the following day (R. 27, 47–48). The agent was asked and answered in the negative, without objection, the following question (R. 30):

Q. Now, when you obtained this bottle from Vernon Grant and Harold Johnson, did you give them an order signed by the Secretary of the Treasury or his delegate?

ARGUMENT

The sole contention is that the evidence does not support the verdict, because the agent was asked only whether he had given the defendants an order signed by the Secretary. The statute (26 U.S.C. 4705 (f)) requires that before issuing any order form "the Secretary or his delegate shall cause the name of the purchaser thereof to be plainly written or stamped thereon before delivering the same." It was evident from the total circumstances of this case that there was never any intention among the parties that there be a sale pursuant to an order. It has been held, under such circumstances, that the government is not required specifically to prove the absence of an order form to establish a violation of the statute. *Chin Gum* v. *United States*, 149 F. 2d 575 (C.A. 1). In any event, the evidence plainly was sufficient to sustain the conspiracy count (which will alone support the verdict), since a completed sale is not necessary to establish a conspiracy to sell narcotics without the prescribed order form. *Martinez* v. *United States*, 25 F. 2d 302 (C.A. 5).

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1963.

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